

***United States Court of Appeals  
for the Second Circuit***



**EXHIBITS**





76-7476

United States Court of Appeals  
For The Second Circuit

No. 76-7476

NEWBURGER, LOEB & CO., INC. as Assignee of Claims of  
David Buckley and Mary Buckley,  
*Plaintiff-Appellant-Cross-Appellee,*  
*against*

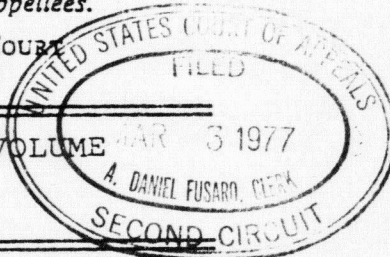
CHARLES GROSS, MABEL BLEICH, GROSS & CO., and  
JEANNE DONOGHUE,  
*Defendants-Appellees-Cross-Appellants,*

NEWBURGER, LOEB & CO., a New York Limited Partnership, ANDREW  
M. NEWBURGER, ROBERT L. NEWBURGER, RICHARD D. STERN,  
WALTER D. STERN, and ROBERT L. STERN as Executors of the Estate  
of Leo Stern, ROBERT L. STERN, RICHARD D. STERN, JOHN F. SETTEL,  
HAROLD J. RICHARDS, SANFORD ROGGENBURG, HARRY B. FRANK  
and JEROME TARNOFF as Executors of the Estate of Ned D. Frank, FRED  
KAYNE, ROBERT MUH, PAUL RISHER, CHARLES SLOANE, ROBERT  
S. PERSKY, FINLEY, KUMBLE, WAGNER, HEINE, UNDERBERG &  
GRUTMAN, a Partnership, (formerly known as Finley, Kumble, Underberg,  
Persky & Roth and Finley, Kumble, Heine, Underberg & Grutman) and  
LAWRENCE J. BERKOWITZ,

*Additional Defendants on  
Counterclaims-Appellants-  
Cross-Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX--SUPPLEMENTAL VOLUME  
OF EXHIBITS  
PAGES E 1093 - E 1124



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TABLE OF CONTENTS  
to  
Supplemental Volume of Exhibits

<u>Exh. No.</u>	<u>Description</u>	<u>Page</u>
Defendants' Trial Exhibit NN	Document distributed December 31, 1970 as having been hammered out that night.	E-1093



AGREEMENT dated as of the 31st day of December, 1970, between NEWBURGER, LOEB & CO., INC., a Delaware corporation (hereinafter referred to as the "Transferee"), and NEWBURGER, LOEB & CO., a limited partnership organized and existing pursuant to Article VIII of the New York Partnership Law (hereinafter referred to as the "Transferor").

W I T N E S S E T H :

WHEREAS, the Transferee has been formed by Messrs. Robert Muh and Paul Risher (the "Stockholders") and the Transferor, together with the Stockholders and certain others who desire to purchase the stock of the Transferee, intends to transfer funds and assets to the Transferee (pursuant to Section 351 of the Internal Revenue Code of 1954, as amended), so that it may carry on the business presently conducted by the Transferor;

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter contained, it is agreed as follows:

1. Assets To Be Transferred. Transferor agrees to transfer, and the Transferee agrees to accept, all of Transferor's assets, real and personal, tangible and intangible, vested or contingent, of any nature whatsoever, subject only to the liabilities specifically assumed hereunder (hereinafter sometimes called the "Property").

## 2. Transferor's Liabilities Assumed by Transferee.

Transferee agrees to assume all liabilities of the Transferor shown on its balance sheet as of December 31, 1970, as set forth on Schedule A attached hereto, all liabilities specifically set forth on Schedule A2, and all liabilities incurred by Transferor from December 31, 1970 to the Closing Date in the ordinary course of business. Except for the liabilities assumed hereunder, the Transferee does not assume any other liabilities of the Transferor including but not limited to the liability of the Transferor and any one of its members for federal, state and local taxes of any kind or nature.

3. The Closing. The Closing of the transfer will take place at 10:00 A.M. on the 25th day of January, 1971 at the offices of Finley, Kumble, Underberg, Persky & Roth, 477 Madison Avenue, New York, New York, or at such other adjourned date and place as shall be mutually agreed upon in writing by the parties. Such date and time of closing are herein defined as the "Closing".

## 4. Transferor's Representations and Warranties.

Transferor hereby represents and warrants that:

- (a) Transferor is a duly organized and validly existing limited partnership pursuant to Article VIII of the New York Partnership Law and has the power and authority to execute and deliver this Agree-



ment, the execution of this Agreement is not in violation or contravention of the Restated Articles of Limited Partnership of the Transferor dated as of February 26, 1970 or any other agreement to which the Transferor or any member thereof is a party or is otherwise charged; and said Articles of Limited Partnership are and on the Closing Date will be in full force and effect and since February 26, 1970 to the date of this Agreement has not been amended, altered or modified in any way and between the date of this Agreement and the Closing Date shall not be amended, altered or modified in any way;

(b) Transferor has good and marketable title in and to any of the assets transferred pursuant to Section 1 above free and clear of any liens, encumbrances and restrictions, except such as are expressly assumed hereunder as set forth in Schedule A. Transferor has authority and power to transfer and assign all agreements and leases to be transferred pursuant to Section 1 above and will have obtained by the Closing consents where necessary to such assignment and transfer;

(c) Transferor has, and will have on the Closing, possession of the assets, Property and leaseholds to be transferred hereunder and no other person has or on the Closing Date will have any rights or possession or use or control of any part of the assets and Property transferred hereunder;

(d) Transferor is not, and on the clos<sup>E</sup> 1096

ing Date will not be, in breach or default of any of its obligations under the leases (except for payment of rent), the Clearing Agreement, underwriting agreements or other agreements assigned under Section 1, all of which are set forth in Schedule B, and, between the date of each of the aforesaid instruments and the date of this Agreement, Transferor has not entered into any amendment, modification or alteration of any of the leases, the Clearing Agreement, underwriting agreements or other agreements hereinabove referred to, except as specifically agreed to in writing and disclosed to Transferee;

(e) Transferor is not, and on the Clos-  
ing Date will not be, a party to any other agreement other than the agreements set forth in Schedule B; and between the date of this Agreement and the Closing, Transferor will not enter into any other agreement other than in the normal and ordinary course of business without the prior written consent of Transferee;

(f) Except as disclosed in Schedule C, there is no litigation, action, suit or administrative proceeding pending or threatened against the Transferor which might materially and adversely affect the assets and business of the Transferor being transferred hereunder



or which might interfere with the transactions contemplated by this Agreement; and

(g) Except as disclosed in Schedules A and A2 attached hereto and made a part hereof, there are no liabilities or other obligations of the Transferor owed to either the New York Stock Exchange or the American Stock Exchange, including, but not limited to, floor charges and other amounts which are a lien on the memberships in each such exchange, and between the date of this Agreement and the Closing, all such liabilities will be discharged as they accrue unless the Purchaser specifically agrees in writing to the contrary.

5. Transferee's Representations and Warranties.

Transferee hereby represents, warrants and agrees that:

(a) Transferee is a corporation duly organized, existing and in good standing under the laws of the State of Delaware;

(b) Prior to the Closing, Transferee will have taken all necessary corporate and legal action to authorize the execution, delivery and performance of this Agreement, and the execution, delivery and performance of this Agreement by Transferee and on the Closing Date will not be in contravention of Transferee's certificate of incorporation or its By-Laws or any contract or agreement to which Transferee is a party or subject.



Obligations. Each and every obligation of Transferee to be performed on the Closing Date or thereafter, as the case may be, shall be subject to the satisfaction prior thereto of the following conditions unless specifically waived in writing by the Transferee:

(a) The representations and warranties made by Transferor in this Agreement shall be true on and as of the Closing Date with the same effect as though such representations and warranties had been made or given on and as of the Closing Date;

(b) Transferor shall have performed and complied with all of its obligations under this Agreement which are to be performed or complied with by it prior to or on the Closing Date;

(c) Transferor shall have delivered to Transferee a certificate of its Executive Committee of Transferor certifying in such detail as Transferee may specify the fulfillment of the conditions set forth in this Section 6;

(d) Transferee shall have received from counsel for Transferor a written opinion dated as of the Closing Date addressed to Transferee and satisfactory to Transferee's counsel in form and substance as to the power and authority of Transferor to enter this



Agreement and consummate the transactions contemplated hereby;

(e) All proceedings to be taken in connection with the transaction contemplated by this Agreement, and all documents incident thereto, shall be reasonably satisfactory in form and substance to Transferee; and Transferor shall have made available to Transferee for examination the originals or true and correct copies of all records and documents relating to the business and affairs of Transferor which Transferee may request in connection with said transaction;

(f) There shall have been delivered to Transferee valid assignments of all leases, contracts and other agreements to be assigned and delivered hereunder, without material change in terms and conditions (except as provided in this Agreement), together with all necessary consents to any such assignments endorsed thereof or attached thereto;

(g) No investigation, suit, action or other proceeding shall be threatened or pending before any court or governmental agency which in the opinion of Transferee's counsel is likely to result in the restraint, prohibition or the obtaining of damages or other relief in connection with this Agreement or the consummation of the transactions contemplated



hereby, or in connection with any claim against Transferor or the members of Transferor, not disclosed by the Schedules attached hereto;

(h) The transfer of the business, property and assets of Transferor in the manner contemplated by this Agreement shall have been duly and validly authorized and approved in accordance with the provisions of the Restated Articles of Limited Partnership of the Transferor dated February 26, 1970, and Transferor shall have delivered to Transferee evidence, in form satisfactory to Transferee's counsel, of such authorization and approval and of compliance with any other statutory and regulatory requirements for the valid consummation by Transferor of the transaction contemplated by this Agreement;

(i) Between the date of this Agreement and the Closing, there shall not have been any material adverse change in the condition, financial or otherwise, of the business of the Transferor to be transferred under this Agreement and there shall not have been any breach of or default in the Transferor's obligations under or its performance of the provisions of Section 8 of this Agreement;

(j) The transfer of the memberships on the New York Stock Exchange and the American Stock Exchange



to stockholders of the Transferee shall have been approved by each of the Exchanges in accordance with their respective applicable rules and regulations, and the documents evidencing such approval shall be delivered to the Transferee at the Closing;

(k) The Transferor shall have changed its name from Newburger, Loeb & Co. to any other substantially dissimilar name prior to the Closing, shall deliver at the Closing its written authorization for the use in perpetuity of the name Newburger, Loeb & Co. and names similar thereto containing the name "Newburger" by the Transferee and the written authorization of Robert L. Newburger and Andrew M. Newburger to use said name for the Transferee to use said name and names similar thereto in perpetuity at the Closing;

(l) The Transferor shall deliver at the Closing a written waiver executed by a majority in interest of its members of the non-competition provisions of paragraph 7.1(a) of the Restated Articles of Limited Partnership of the Transferor in favor of all members of the Transferor who make a written request for such waiver to enable them to participate in the activities of the Transferee to the fullest extent;



(m) Transferor shall have cooperated with and aided Transferee in transferring from the employ of Transferor to the employ of Transferee all those registered representatives as to which Transferee gives Transferor notice that it shall employ them, such cooperation and aid to include all filings necessary or otherwise required by any securities or commodity exchange, the Securities and Exchange Commission, the National Association of Securities Dealers or any other administrative body to effectuate such transfer of employment:

(n) Transferee shall have been approved by the New York Stock Exchange and the American Stock Exchange as a member firm, and shall have been registered as a broker-dealer with the Securities and Exchange Commission and all other necessary governmental agencies:

(o) There shall have been delivered to Transferee assignments, in form and substance satisfactory to counsel to Transferee, by Transferor, and its 1967, 1968 and 1969 predecessors, of any "back office" recoveries and claims applicable to the period January 1, 1967 to date, net of expenses, counterclaims, set-offs and third-party claims with respect to back office operations.

7. Conditions Precedent to Transferor's Obligations. Each and every obligation of Transferor to be



performed on the Closing Date shall be subject to the satisfaction prior thereto of the following conditions, unless specifically waived in writing by Transferor:

(a) Transferee's representations and warranties contained in this Agreement shall be true at and as of the Closing Date as though such representations and warranties were made at and as of the Closing Date;

(b) Transferee shall have performed and complied with its obligations under this Agreement which are to be performed or complied with by it prior to or on the Closing Date;

(c) Transferee shall have delivered to Transferor an opinion of Transferee's counsel, dated as of the Closing Date, satisfactory to Transferor in form and substance, as to Transferee's corporate existence and good standing and that the execution and performance of this Agreement have been authorized by the Board of Directors of Transferee;

(d) Transferee shall have delivered to Transferor certified copies of the resolution of its Board of Directors authorizing the execution, delivery and performance of this Agreement, and the issuance of the securities and obligations required hereby;



(e) 8,000 shares of Bacardi Corp. shall E 1104

have been deposited in a senior subordinated account with Transferee under a subordination agreement expiring no earlier than December 31, 1973;

(f) Messrs. Robert Muh and Paul Risher shall have entered into employment agreements with Transferee commencing on the Closing Date and terminating December 31, 1972. Such employment agreements shall provide for salaries at the rate of \$35,000 per year or commissions at the rate then paid to registered representatives, whichever is higher. Additional compensation may be granted to Messrs. Risher and Muh in any fiscal year provided that the aggregate of all compensation does not exceed 16% of Transferee's net profits in such year.

(g) Fred Kayne shall have entered into an employment agreement with Transferee commencing the Closing Date and terminating December 31, 1972 whereby he is to be paid by commissions at the rate then paid to registered representatives;

(h) There shall have been delivered to Transferor, for delivery to Transferee at the Closing,

(1) a three-year note of Robert Newburger to Transferee in the amount of his capital deficit as at November 30, 1970, secured by an assignment of any and all federal and state income tax refunds due or to be due to him



together with a power of attorney to Robert S. Persky, or such other person as may be acceptable to the parties, as trustee, to collect same and turn such over to Transferee; (2) three-year notes of Robert L. Stern and Harold J. Richards to the order of Transferee in the amount of 75% of their respective capital deficits as at November 30, 1970, secured by assignments of any and all federal and state income tax refunds due or to be due to them, together with a power of attorney to Robert S. Persky, or such other person as may be acceptable to the parties, as trustee, to collect same and turn such over to Transferee; and (3) a three-year note of Andrew Newburger to the order of Transferee in the amount of 75% of his capital deficit as at November 30, 1970, secured by an assignment of the first \$200,000, one-half of the next \$100,000 and three-quarters of any excess of any and all federal and state income tax refunds due or to be due to him, together with a power of attorney to Robert S. Persky, or such other person as may be acceptable to the parties, as trustee, to collect same and turn such over to Transferee. The capital deficits shall be computed by Peat, Marwick, Mitchell & Co., which computation shall be final and binding;

(i) The purchase of common stock by Messrs. Muh, Risher and Aixala as set forth below shall



have been consummated.

E 1106

8. Conduct of Transferor's Business Pending Closing Date. From and after the date of this Agreement and until the Closing Date:

(a) Transferee and its authorized representatives shall have full access during normal business hours to all properties, books, records, contracts and documents of Transferor, and Transferor shall furnish or cause to be furnished to Transferee and its authorized representatives all information with respect to the affairs and business of Transferor and Transferee may request;

(b) Transferor shall carry on its business diligently and substantially in the same manner as heretofore and shall not make or institute any unusual or novel purchase, sale, lease, management, accounting or operation;

(c) Neither Transferor nor its members shall enter into any contract or commitment or engage in any transaction not in the usual and ordinary course of business without the prior written consent of Transferee;

(d) Neither Transferor nor its members will sell or dispose of any assets, other than securities, with an original cost in excess of \$100 without the prior written consent of either Muh or Risher;



consent of the Transferee, Transferor will not create any indebtedness, other than that incurred in the usual and ordinary course of business, incurred pursuant to existing contracts disclosed in the Schedules attached hereto, or incurred pursuant to commitments permitted hereby, or that reasonably incurred in doing the acts and things contemplated by this Agreement;

(f) Transferor and all property, real and personal, owned or leased by Transferor and its subsidiaries will be adequately insured against all ordinary and insurable risks; and all property shall be used, operated, maintained and repaired in a normal business manner;

(g) Transferor will use its best efforts (without making any commitments on behalf of Transferee) to preserve its business organization intact, to keep available to Transferee the present key officers and employees of Transferor requested by Transferee, and to preserve for Transferee the present relationships of Transferor and its members with customers and others having business relations with them; --

(h) Transferor shall not do any act or omit to do any act, or permit any act or omission to act, which will cause a material breach of any material

contract, commitment or obligation of Transferor;

(i) Transferor will duly comply with all applicable laws as may be required for the valid and effective transfer of the property, assets and business contemplated by this Agreement;

(j) Transferor will furnish to Transferee all the information concerning Transferor required for inclusion in any statement or application made by Transferee to the New York and American Stock Exchanges and any governmental body in connection with the transaction contemplated by this Agreement, and Transferor represents and warrants that all such information furnished to Transferee for such applications or statements shall be true and correct in all respects without omission of any material fact to be stated to make the information not misleading;

(k) It is understood and agreed that between the date of this Agreement and the Closing hereunder, certain members of the Transferor are or may become shareholders, directors, officers or employees of the Transferee; that such members of the Transferor will continue to function in their capacities as such in the normal and regular conduct of the Transferor's business with all the rights, powers and duties as they presently hold or



cwe without any additional liabilities or obligations

E 1109

to the Transferor beyond those imposed upon them by the terms of the abovementioned Restated Articles of Limited Partnership; and that no self-dealing, conflict of interest or other fiduciary duties shall be imputed or otherwise charged to them by reason of their continuing to function simultaneously as members of the Transferor and shareholders, directors, officers or employees of the Transferee between the date of this Agreement and until such time as they shall withdraw;

(1) Risher, Muh & Co. will be retained by Transferor to assist its management, at the rate of \$5,834 per month. The consent of either of Messrs. Muh or Risher shall be required for any expenditure or commitment in excess of \$100.

9. Issuance of Securities and Stock. The following securities and stock will be issued to Transferee at the Closing:

(a) Subordinated convertible notes in the aggregate principal amount of \$ (said amount being the aggregate value of the securities and cash contributed by the limited partners of Transferor as at November 30, 1970 or December 31, 1970 as to securities still held and interest then due). The principal of each of such notes shall be payable 20% on Decem-

ber 31, 1973, 40% on December 31, 1974 and 40% on December 31, 1975, and they shall bear interest at 2% over the prime rate as designated from time to time by Chemical Bank, New York, New York; but in no event shall interest ever be greater than the higher of 9% or the then prime rate. All interest to be payable quarterly only out of earnings of the current year to date with an upward adjustment at the end of the year in respect of earnings in such year in excess of the earnings paid, but otherwise noncumulative. The notes shall be convertible into an aggregate of 250,000 shares of non-voting common stock of Transferee at the option of the registered holder, with usual provisions for price dilution. These subordinated convertible notes are subordinate to the subordinated accounts described in section 9A below, in all respects, including liquidation and payment of principal, interest, the delivery of dividends, interest upon securities and capital gains distribution upon securities;

(b) As an inducement for the owners of the subordinated accounts to extend their loans, Transferee will duly authorize and issue at the Closing non-voting common stock representing 3-1/2% of its total equity capitalization on the date of Closing pro rata to such owners at 5¢ per share;



(c) With respect to each \$100 in the capital accounts of former or present general partners of Transferor (other than Charles Gross and Lewis Bracker) whose capital accounts are not in deficit, calculated as of November 30, 1970, one share of 5% convertible preferred stock, \$100.00 par, of Transferee, each share of which shall be convertible into 5 shares of non-voting common stock of Transferee (which conversion rate shall be subject to normal price anti-dilution provisions). Dividends on said convertible preferred stock shall be payable quarterly only out of earnings with an upward adjustment at the end of each year in respect of earnings in such year in excess of the amounts paid, but otherwise such dividends shall be noncumulative. No dividend shall be paid nor provision therefor be made in any year with respect to any other class of stock prior to provision for payment in full of the dividend on the preferred stock. The relative rights, preferences, and limitations of the 5% convertible preferred stock, \$100.00 par value, of the Transferee shall not be subject to alteration, amendment or change, nor shall any class of stock equal or superior in rights to the 5% convertible preferred stock be created, except upon the written consent of the holders of 66-2/3% of such convertible preferred stock. The 5% convertible preferred stock shall: (i)



have a preference over all other classes of stock upon the dissolution of, or upon any distribution of substantially all the assets of, the Transferee equal to its par value, and (ii) be non-voting (except in those situations provided in the certificate of incorporation or under Delaware law under which such preferred stock shall have voting rights to vote as a class);

(d) It is understood that the subordinated convertible notes described in subparagraph (a) above, shall be distributed by Transferor to the present limited partners of Transferor (other than persons whose capital is deemed to be treated as limited partners' capital by reason of their resigning as general partners during 1970) in proportion to the value as of November 30, 1970 of the securities and cash contributed by each of them or December 31, 1970 as to securities still held and interest then due; and that the 5% convertible preferred stock described in subparagraph (c) above shall be distributed to former or present general partners of Transferor (other than Charles Gross and Lewis Bracker) whose capital accounts are not in deficit (calculated as of November 30, 1970) on a basis of one share for each \$100 in such account.



9A. Assignment of Subordinated Accounts.

(a) As referred to herein, the "subordinated accounts" are the accounts of Albert Dworkin, Milton Lobel, Irving Lobel, Geza Polaty, Kinko Polaty, Shirley P. Newburger and Betty N. Newborg. At the Closing, the subordinated accounts and the subordination agreements relating thereto will be assigned to the Transferee, the obligations of the Transferee under such subordination agreements will be delegated to and will be assumed by the Transferee, and the subordination agreements covering such accounts will be extended to December 31, 1972. The owners of the "subordinated accounts", listed above, expressly consent to such assignment, assumption and extension. The subordination agreements will be amended to provide for an interest rate of 4% and that management of Transferee will use its best efforts not to sell the securities covered thereby unless, in management's opinion, Transferee is in danger of (i) insolvency, (ii) violation of the capital requirements as determined according to the rules of the New York Stock Exchange, or (iii) the owner of the subordinated account has given permission for such a sale. Transferee expressly agrees that prior to the sale of any securities in the subordinated accounts, all securities in accounts of officers designated as capital ac-



counts will have been sold;

(b) There shall be mandatory prepayments of the subordinated accounts upon the following terms: (i) each owner of a subordinated account will receive his pro rata share of 25% of all tax refunds collected by the trustee under section 7(h) of this Agreement; (ii) Transferor and Transferee shall take all necessary steps to require W. E. Hutton & Co. to deliver all moneys or securities owing or to be owed to Transferor by W. E. Hutton & Co. Transferee will deliver 30% of all amounts received (securities being valued at their fair market value) in excess of \$200,000 to the owners of the subordinated accounts pro rata; (iii) Transferee covenants and agrees that, as promptly as possible after the execution of this Agreement in final form, it will cause Transferor to deliver to the holders of the subordinated accounts all dividends, interest and distributions of capital gains held by Transferor at that time and Transferee covenants that all such dividends, interest and distributions of capital shall, upon receipt in the future, be promptly delivered to the holders of the subordinated accounts.

10. Transactions at the Closing.

(a) At the Closing, Transferor will deliver to the Transferee the following:



1. Assignments of all leases, agreements, memberships and all other rights to be transferred pursuant to section 1 with consents thereto of the other parties where necessary.

2. Bills of sale with covenants of warranty, endorsements and assignments and other good and sufficient instruments of transfer as shall be effective to vest in Transferee good and marketable title to the property to be conveyed hereunder.

3. Such documents as are necessary or otherwise required to transfer the memberships from the New York Stock Exchange and the American Stock Exchange.

4. A notarized certificate of the appropriate member of the Transferee dated the Closing Date to the effect that all representations and warranties of the Transferee hereunder are true and correct as of the Closing Date and that all agreements and obligations of the Transferee to be performed under this Agreement have been performed.

5. The opinion of Transferee's counsel as required under the provisions of section 6 above.

(b) At the Closing, Transferor will deliver the following:

1. Its subordinated convertible notes



in accordance with the provisions of section 9(a) above.

2. Its non-voting common stock in accordance with the provisions of sections 9(b) and 11(g) hereof.

3. Its 5% convertible preferred stock in accordance with the provisions of section 9(c) above.

4. A written assumption of the liabilities of the Transferor to be assumed by the Transferee in accordance with the provisions of section 2 above.

5. A certificate signed by a president or a vice president and a secretary or assistant secretary of the Transferee dated the Closing Date to the effect that all representations and warranties of the Transferee hereunder are true and correct as of the Closing Date and all agreements and obligations of the Transferee to be performed under this Agreement have been performed.

6. The opinion of Transferee's counsel required under the provisions of section 7 above.

11. Additional Agreements.

(a) Transferor will pay all sales, transfer and documentary taxes payable in connection with the sale, conveyances, assignments, transfers and deliveries to be made from Transferor to Transferee hereunder;

(b) From time to time hereafter at



Transferee's request, whether on or after the Closing Date, and without further consideration, Transferor, at its expense, will execute and deliver such further instruments of conveyance, transfer and assignment as Transferee reasonably may request in order more effectively to convey, transfer and assign to Transferee any of the Property to be sold hereunder, including the use of Transferor's best efforts to obtain such consent as may be necessary from others and will execute any other documents necessary or otherwise required in order to consummate the transactions contemplated by this Agreement:

(c) In the event that the aggregate net losses of Transferee from operations shall exceed \$350,000 for any period of four consecutive calendar months or less ending prior to January 1, 1973 or exceed \$600,000 in any fiscal year ending prior to January 1, 1973, the holders of a majority in interest of any class of subordinated convertible notes or of the subordinated accounts shall have the option, exercisable in writing within 30 days after the last day of such 4-month or annual period, to require that the Transferee liquidate, in which case the officers, directors, and stockholders of Transferee shall take all necessary steps to effectuate such liquidation; provided, however, that such option



shall not be exercisable at any time when the net worth of Transferee is greater than \$1,000,000;

(d) Not later than the 15th day of each month prior to January 1, 1973, each subordinated lender and subordinated convertible noteholder /shall receive from Transferee a balance sheet and a profit and loss statement for the preceding month and for the year to date;

(e) With respect to accounts receivable arising from capital deficits from general partners or former general partners of Transferor, Transferee shall forgive 25% of the accounts receivable with respect to Robert Stern, Harold Richards and Andrew Newburger. None of the foregoing will be in a management position with respect to Transferee. With respect to any present or former general partners not to be in a management position with Transferee whose capital deficit is less than \$20,000, the entire amount of such accounts receivable will be forgiven;

(f) Provided all of the conditions of this Agreement have been met, Mr. Alex Aixala agrees to deposit prior to the Closing 8,000 shares of Bacardi Corp. common stock in a senior subordinated account with the Transferee under a subordinated loan agreement, reasonably satisfactory to Finley, Kumble, Underberg, Persky & Roth, counsel to the Transferee, expiring no earlier than December 31, 1973;



(g) On the Closing Date, the Trans-  
ferce shall sell to the persons listed on Schedule E,  
the number of shares of common stock of the Transferee  
listed next to their names on such Schedule at a price of  
\$.05 per share. Messrs. Robert Muh and Paul Risher  
agree to purchase on the Closing Date the number of shares  
set forth opposite their names on such Schedule; Alex  
Aixala agrees to purchase on the Closing Date the number  
of shares set forth opposite his name at the par value  
thereof; and they agree to use their best efforts to  
obtain prior approval of the New York Stock Exchange  
for the purchase of such shares.

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12. Indemnity. Transferor hereby indemni-  
fies and saves Transferee harmless from and against any  
and all losses, damages, claims, actions, judgments, pro-  
ceedings, or causes of action whatsoever and all expenses,  
including attorneys' fees, arising out of or relating to  
any liability of Transferor not expressly assumed here-  
under by Transferee and any breach of any warranty, repre-  
sentation or agreement of the Transferor herein contained.

13. Miscellaneous Matters.

(a) This Agreement contains the entire  
understanding between the parties and may not be modified,  
altered or amended except by a writing signed by both the  
parties;

(b) The representation, warranties and



agreements of the parties hereto shall survive the Closing under this Agreement;

(c) All notices or other communications required or issued hereunder shall be in writing and shall be deemed given when delivered by certified mail, return receipt requested, certification and postage charges prepaid as follows:

To the Transferor:

5 Hanover Square  
New York, N.Y. 10004

To the Transferee:

c/o Finley, Kumble,  
Underberg, Persky &  
Roth  
477 Madison Avenue  
New York, N.Y. 10022

(d) This Agreement and the construction thereof shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the 31st day of December, 1970.

NEWBURGER, LOEB & CO., INC. (Transferee)

By \_\_\_\_\_

NEWBURGER, LOEB & CO. (Transferor)

By \_\_\_\_\_

(Andrew M. Newburger)



By \_\_\_\_\_  
(Robert L. Newburgen)

By \_\_\_\_\_  
(Leo Stern)

By \_\_\_\_\_  
(Robert L. Stern)

By \_\_\_\_\_  
(Richard D. Stern)

By \_\_\_\_\_  
(Edward R. Holt)

By \_\_\_\_\_  
(William McGovern)

By \_\_\_\_\_  
(Harold J. Richards)

By \_\_\_\_\_  
(Sanford Roggenburg)

By \_\_\_\_\_  
(Edward Rubin)

By \_\_\_\_\_  
(Julius Schnall)

Each of the undersigned limited partners of  
NEWBURGER, LOEB & CO. hereby consents to and accepts the  
provisions of the foregoing Agreement:

LIMITED PARTNERS:

ELLA L. NEWBURGER, ANDREW M.  
NEWBURGER, ROBERT L. NEWBURGER,  
and DONALD L. NEWBORG, as  
Executors of and Trustees under  
the Last Will and Testament of  
Lester M. Newburger, Deceased

MAY U. NEWBURGER, and GEORGE B.  
LEVY, as Executors of and  
Trustees under the Last Will  
and Testament of Morris Newburger,  
Deceased

GERALD N. FRANK

WILLARD S. IRLE

JEANNE G. DONOGHUE

MABEL BLEICH

JACK WACHS

SAUL A. BROWN

JOSEPH W. QUARTE

PHILIP SHULMAN



Each of the undersigned owner of subordinated  
accounts of NEWBURGER, LOEB & CO. hereby consents to and  
accepts the provisions of the foregoing Agreement:

ALBERT DWORKIN

\_\_\_\_\_

MILTON LOBEL

\_\_\_\_\_

IRVING LOBEL

\_\_\_\_\_

GEZA POLATY

\_\_\_\_\_

KINKO POLATY

\_\_\_\_\_

SHIRLEY P. NEWBURGER

\_\_\_\_\_

BETTY N. NEWBORG

\_\_\_\_\_

The undersigned consent to and accept the  
foregoing Agreement:

ALEX AIXALA

NED FRANK

FRED KAYNE

ROBERT MUH

PAUL RISHER

ADOLPHUS ROGGENBURG

JOHN F. SETTEL

CHARLES SLOANE